

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

DEWBERRY ENGINEERS, INC.,

Plaintiff,

v.

DEWBERRY GROUP, INC. F/K/A
DEWBERRY CAPITAL CORPORATION.

Defendant.

Civil Action No. 1:20-cv-610

**DEWBERRY GROUP, INC.’S MOTION TO EXCLUDE
THE EXPERT OPINION OF MR. JAMES BERGER**

Defendant Dewberry Group, Inc., f/k/a Dewberry Capital Corporation (“Dewberry Group”), pursuant to Fed. R. Civ. P. 26 and 37, Fed. R. Evid. 702, and Local Rule 7, respectfully moves this Court to exclude the opinion of Plaintiff’s expert, Mr. James Berger.

As explained in the accompanying Memorandum of Law, Mr. Berger’s likelihood-of-confusion survey is fatally flawed in multiple respects. The survey’s universe of respondents is over-inclusive; the survey fails to use a control group; it does not replicate market conditions; it uses an unacceptable leading question; and it improperly counts multiple respondents as “confused” about the difference between the businesses of Plaintiff and Dewberry Group.

For the foregoing reasons, Dewberry Group moves this Court to exclude the expert opinion of Mr. James Berger. Counsel hereby represents that a good-faith effort to narrow the area of disagreement has been made in accordance with Local Civil Rule 7(E) and Local Civil Rule 37(E).

Submitted this 23rd day of June, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2021, I caused a copy of the foregoing to be electronically filed using the CM/ECF system, which will then send a notification of such filing to the following:

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